

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC 20591

In the matter of the petition of

**USA JET AIRLINES**

For an exemption from  
§ 121.436(a)(3)  
of Title 14, Code of Federal  
Regulations

Exemption No. 17940

Regulatory Docket No. **FAA-2015-6560**

**GRANT OF EXEMPTION**

By letter dated October 23, 2015, Mr. Craig Hunt, Director of Operations, USA Jet Airlines (USA Jet), 2068 E Street, Belleville, MI 48111, petitioned the Federal Aviation Administration (FAA) for an exemption from § 121.436(a)(3) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow pilots to use the flight time gained as a pilot in command (PIC) at USA Jet in the Falcon Jet DA-20<sup>1</sup> operating under operations specification (OpSpec) A057 and in accordance with § 135.4(a)(1), (a)(2)(i), and (a)(2)(ii) to count toward the 1,000 hours of flight experience required by § 121.436(a)(3) to serve as pilot in command (PIC) in part 121 air carrier operations.

**The petitioner requests relief from the following regulation:**

Section 121.436(a)(3) prescribes, in pertinent part, that no certificate holder may use nor may any pilot act as pilot in command of an aircraft unless the pilot has 1,000 hours as second-in-command in part 121 operations, pilot in command in operations under § 91.1053(a)(2)(i), PIC in operations under § 135.243(a)(1), or any combination thereof.

---

<sup>1</sup> The FAA notes that DA-20 is the type rating required to operate the following aircraft on Dassault Aviation type certificate A7EU: Fan Jet Falcon, Fan Jet Falcon Series C, Fan Jet Falcon Series D, Fan Jet Falcon Series E, Fan Jet Falcon Series F, Fan Jet Falcon Series G, Mystère Falcon 20-C5, Mystère Falcon 20-D5, Mystère Falcon 20-E5, and Mystère Falcon 20-F5. In USA Jet's Operations Specifications, the aircraft is identified as the AMD-20-D and AMD-20-E.

**The petitioner supports its request with the following information:**

USA Jet contends it meets the intent of § 121.436(a)(3), and maintains that although it only operates all-cargo turbojets, the PICs operating the Falcon Jet DA-20 aircraft “meet and exceed” all requirements of § 135.243(a)(1). USA Jet supports its position with the following information:

- USA Jet is an all-cargo airline that maintains a part 121 supplemental and part 135 on-demand certificate.
- USA Jet holds OpSpec A057 (Eligible On-Demand Operations) and complies with § 135.4(a)(2)(ii)(A). As a result, all of USA Jet DA-20 PICs are required to have an airline transport pilot (ATP) certificate.
- USA Jet trains and qualifies all DA-20 pilots in accordance with the applicable sections of subparts N and O, including proficiency checks in accordance with part 121 appendix F, and Line Oriented Flight Training (LOFT) in accordance with part 121 appendix H.
- The USA Jet DA-20 PICs train to “a higher standard” than pilots who train in accordance with part 135. In particular, USA Jet refers to the passenger-carrying operations described in § 135.243(a)(1).

USA Jet reviewed the rationale for establishing the air carrier experience requirement and the FAA’s arguments for denying other air carrier petitions for exemption from this regulation and provided an explanation for how USA Jet is different in three areas.

First, the FAA issued the *Pilot Certification and Qualification Requirements for Air Carrier Operations* final rule on July 15, 2013<sup>2</sup>, creating a new requirement for a PIC in part 121 operations to have 1,000 hours of experience in air carrier operations. In the preamble to the final rule, the FAA addressed comments on what type of flight time should count for the 1,000 hours of experience in air carrier operations. The FAA stated it determined the ability to fly at the ATP certification level and demonstrate this proficiency during evaluation is important.<sup>3</sup>

Second, the FAA stated in the aforementioned final rule that operations under §§ 91.1053(a)(2)(i) or 135.243(a)(1) require an ATP certificate, are multi-crew operations, generally use turbine aircraft, and therefore, are the most comparable to part 121 operations.

Third, the FAA determined that, while other parts 91 and 135 operations may involve certain elements that are relatable to part 121 operations, the varied nature of operations does not make credit toward the 1,000-hour requirement appropriate. Because turbojet pilots in part 135 cargo operations are not required to hold an ATP

---

<sup>2</sup> 78 FR 42324.

<sup>3</sup> *Id.* at 42337.

certificate, the time accrued in such operations does not count toward the requirements of § 121.436(a)(3).

USA Jet contends its DA-20 PICs, in accordance with § 135.4(a)(2)(ii)(A) and OpSpec A057, must have an ATP certificate to operate and must demonstrate the proficiency intended by the 2013 Final Rule during evaluation. USA Jet also asserts that its operations are similar to those the FAA described in the 2013 Final Rule because it operates in accordance with § 135.4(a)(1), (a)(2)(i), and (a)(2)(ii), which requires:

1. A crew of two pilots (multi-crew);
2. The PIC to have at least 1,500 hours of flight time and for multiengine, turbine-powered, fixed-wing aircraft (DA-20), to hold an ATP certificate and type rating; and
3. The SIC to hold a commercial pilot certificate with an instrument rating and at least 500 hours of flight time. Additionally, USA Jet reiterated that it trains and qualifies its pilots in accordance with subparts N and O of part 121. Lastly, USA Jet notes the requirement for the SIC to have at least 500 hours is more restrictive than § 135.243(a)(1).<sup>4</sup>

The petitioner explains that granting this exemption is in the public interest because USA Jet provides necessary logistical requirements to the North American auto and agricultural industry. USA Jet states it provides important airlift to meet the supply chain demands to assembly lines in order to keep the manufacturing lines running and minimize interruptions that would cause shut downs and employee layoffs. The exemption would also ensure continued U.S. on-demand cargo jobs stay in the U.S., instead of the need being filled by foreign airlines.

The petitioner states that granting the exemption would not adversely affect safety. USA Jet reiterates its pilots are trained and evaluated under part 121 subparts N and O requirements and that it operates in accordance with § 135.4(a)(2)(ii)(A) and OpSpec A057. USA Jet asserts the requirements of § 135.4(a)(1), (a)(2)(i), and (a)(2)(ii) meet or exceed the flight crew qualifications/requirements of § 135.243(a)(1).

The petitioner requested that this exemption include operations outside the United States, because the airline provides economic benefits to other countries. Additionally, it states that cargo operations in support of U.S.-based manufacturers routinely take place outside the United States.

---

<sup>4</sup> The FAA notes that § 135.243 only specifies PIC qualifications. SIC qualifications are specified in § 135.245 and additional SIC qualifications are specified in § 135.4 for “eligible on-demand operations.”

**The FAA's analysis is as follows:**

A summary of the petition was published in the Federal Register on August 12, 2016. 81 FR 53536. The FAA received three comments. Two were in support of a grant of exemption with information and rationale similar to that provided by the petitioner. One commenter was opposed to a grant of exemption and asserted that if the FAA granted this exemption, it would have to grant an exemption to all part 121 supplemental operators.

The FAA has fully considered the petitioner's supporting information and determines a grant of exemption from § 121.436(a)(3) would provide a level of safety equivalent to the regulation and is in the public interest.

Under § 121.436, experience in air carrier operations means PIC time in operations under §§ 91.1053(a)(2)(i) or 135.243(a)(1), or SIC time in part 121 operations. In the preamble to the 2013 Final Rule, the FAA addressed comments on what type of flight time should count for the 1,000 hours of experience in air carrier operations. The FAA stated it determined that the ability to fly at the ATP certificate level and have demonstrated this proficiency during evaluation is an important regulatory differentiation.<sup>5</sup>

The petitioner addresses this concern by pointing out that it requires its DA-20 PICs to have an ATP certificate and type rating per OpSpec A057 and in accordance with § 135.4(a)(2)(ii)(A). It also maintains that the DA-20 PICs are trained and checked to part 121 standards under its approved training program, which demonstrates the ability and proficiency to fly and operate at an ATP level. The FAA agrees with the petitioner and finds that the DA-20 PICs are trained and evaluated, because of USA Jet's operations under § 135.4, to the competency expected of a holder of an ATP certificate who serves as PIC in operations under part 121, § 135.243(a)(1), or § 91.1053(a)(2)(i).

The FAA first proposed that certain operations under part 135 should require an ATP certificate in 1977, as noted in that final rule preamble. In that notice of proposed rulemaking, the FAA stated the requirement to hold an ATP certificate to act as PIC in some part 135 operations was "based in part on operational complexity and the number of persons carried, would provide a level of safety more comparable to that provided by part 121."<sup>6</sup> The FAA still maintains this position. The FAA notes that USA Jet operates its part 135 on-demand cargo operations and its part 121 supplemental cargo operations in nearly an identical manner. Therefore, the operations are much more comparable in complexity than a part 135 passenger operation might be to a part 121 supplemental cargo operation.

For the same reasons described previously, the FAA determined that PIC operations under §§ 91.1053(a)(2)(i) or 135.243(a)(1) should count towards the air carrier experience requirement because those operations require the PIC to hold an ATP certificate, they are multicrew operations, generally use turbine-powered aircraft, and therefore, are comparable to

---

<sup>5</sup> Id. at 42337.

<sup>6</sup> 78 FR 42357.

part 121 operations.<sup>7</sup> The FAA acknowledges that, although it did not address “eligible on-demand operations” that would be conducted in accordance with § 135.4 and OpSpec A057<sup>8</sup> in the final rule, PICs who hold an ATP certificate and type rating and are accustomed to operating in multicrew environments with multiengine, turbine-powered aircraft are likely to fulfill requirements comparable to those the FAA contemplated in referring to §§ 91.1053(a)(2)(i) and 135.243(a)(1).

The FAA finds that USA Jet operates multicrew, multiengine, turbine-powered aircraft and holds OpSpec A057. Therefore, when operating under OpSpec A057, USA Jet complies with § 135.4, which requires that the PIC hold an ATP certificate and applicable type rating. USA Jet trains and checks its pilots under part 121, subparts N and O, and appendices E, F, and H, which exceeds the training and qualification requirements of subparts E, G, and H of part 135. The FAA agrees that there would be no reduction in safety by permitting a PIC who is required by regulation to hold an ATP certificate and type rating and is continuously trained and checked in accordance with part 121 to use the time accrued as a PIC in that part 135 operation towards the air carrier experience requirements of § 121.436(a)(3).

The FAA has considered three previous petitions for exemption from this regulation. On October 1, 2014, and May 2, 2016, the FAA denied petitions from Gulf & Caribbean Cargo, Inc. (Gulf & Caribbean) for an exemption from § 121.436(a)(3).<sup>9</sup> The petitioner requested an exemption to allow PIC time while operating turbojet aircraft in part 135 cargo operations count toward the 1,000-hour requirement of § 121.436(a)(3). This part 135 cargo operation, however, did not fulfill the criteria of § 135.4. The FAA found the flight time was not equivalent to that contemplated by the 2013 Final Rule because Gulf & Caribbean operations did not require evaluation to and operation with ATP proficiency.

On December 8, 2014, the FAA denied Key Lime Air Corporation’s (Key Lime Air) petition for an exemption from § 121.436(a)(3).<sup>10</sup> The request was similar to Gulf & Caribbean’s except the petitioner requested an exemption to allow PIC time in cargo operations with turboprops under part 135 to count toward the 1,000-hour requirement. The FAA found that this petition did not differ materially from that presented by Gulf & Caribbean, because Key Lime Air pilots are only required to hold a commercial pilot certificate. As discussed earlier, USA Jet’s petition differs materially from those previously denied.

The FAA has carefully considered USA Jet’s petition for exemption and determined fulfillment of the criteria set forth in the petition achieve a level of safety that is equivalent to the level that § 121.436(a)(3) achieves. The FAA’s determination, as explained above, is

---

<sup>7</sup> 78 FR 42357.

<sup>8</sup> To operate multiengine turbine-powered, fixed-wing aircraft in compliance with OpSpec A057 and § 135.4 without deviation, the following requirements must be met: PIC must hold an ATP certificate and applicable type ratings and have a minimum of 1,500 hours of flight time; there is a two pilot crew minimum for all operations. USA Jet PICs are required by rule to hold an ATP certificate and the appropriate type rating when conducting “eligible on-demand operations.”

<sup>9</sup> Dockets No. FAA-2014-0361 and FAA-2016-6008.

<sup>10</sup> Docket No. FAA 2014-0360.

based on the fact that USA Jet adheres to § 135.4(a)(2)(ii)(A) and holds OpSpec A057 to conduct “eligible on-demand operations.” In addition, in accordance with § 135.3(c), USA Jet has chosen to comply with subparts N and O of part 121, which contain critical training and qualification requirements that ensure a high level of safety. In addition, the FAA has determined that a grant of exemption would allow pilots with the most extensive training and demanding experience to serve as PIC in part 121 operations. It is in the public interest to ensure candidates with the best experience are available to serve as PIC in part 121 operations.

The petitioner also requested to use the proposed relief outside of the United States since it conducts flights to international operations. The air carrier experience requirement to serve as a PIC in part 121 operations is an FAA requirement. Therefore, the FAA agrees and has included a condition and limitation that the exemption may be used to operate outside the United States, unless otherwise prohibited by a foreign country.

### **The FAA’s Decision**

In consideration of the foregoing, I find that a grant of exemption would provide a level of safety equal to that provided by the rule and is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 106(f), 40113, and 44701 delegated to me by the Administrator, USA Jet Airlines is granted an exemption from 14 CFR § 121.436(a)(3), subject to the conditions and limitations listed below. In addition, a pilot employed or previously employed by USA Jet Airlines is also granted an exemption from § 121.436(a)(3) to the extent necessary to serve as PIC in part 121 operations, subject to the conditions and limitations listed below. A part 119 certificate holder employing a pilot previously employed by USA Jet Airlines is also granted an exemption from § 121.436(a)(3) to the extent necessary to allow that pilot to serve as a PIC in its part 121 operations, subject to the conditions and limitations listed below.

### **Conditions and Limitations**

1. Pilots employed or previously employed as PICs in USA Jet part 135 cargo operations may use that flight time to meet the air carrier experience requirement in § 121.436(a)(3) for 1,000 hours if the following conditions are met:
  - a. Each flight must have been conducted by USA Jet in accordance with OpSpec A057 and § 135.4 without deviation;
  - b. Each flight must have been conducted in the DA-20 Falcon Jet, and the pilot must have served as the PIC of the flight; and
  - c. For each flight, the pilot must have been trained and qualified as PIC in accordance with USA Jet’s approved training and qualification program in accordance with subparts N and O of part 121.

2. Prior to commencing training to serve as PIC in part 121 operations with another part 119 certificate holder, the pilot previously employed by USA Jet must provide that certificate holder with a copy of this exemption and appropriate documentation, certified by USA Jet, which supports his or her previous employment as a PIC on the DA-20 Falcon Jet and flight time obtained in accordance with paragraph 1.
3. In accordance with § 121.683, USA Jet and other part 119 certificate holders must include the following documentation in each pilot crewmember record to which this exemption applies:
  - a. A copy of this grant of exemption (and any subsequent exemption that may apply); and
  - b. Other part 119 certificate holders must also include the documentation provided by the pilot in accordance with paragraph 2.
4. Part 119 certificate holders and pilots may operate outside the United States under this exemption, unless otherwise prohibited by a foreign country.

This exemption terminates on August 31, 2021, unless sooner superseded, amended, or rescinded.

Issued in Washington, DC, on September 15, 2018.

/s/

Rick Domingo  
Executive Director, Flight Standards Service